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FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

SEP 19 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Implementation of Section 703 )  
Of the Telecommunications Act of 1996 ) CS Docket No. 96-166  
Amendments and Additions to the )  
Commission's Rules Governing )  
Pole Attachments )

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To: The Commission

JOINT PETITION FOR CLARIFICATION

Pursuant to Section 1.429 of the Federal Communications Commission's (FCC) Rules, the Edison Electric Institute (EEI) and UTC, The Telecommunications Association (UTC),<sup>1</sup> hereby submit their Joint Petition for Clarification of the Commission's *Order*, FCC 96-327, released August 6, 1996, in the above-captioned proceeding to implement the "self-effectuating" provisions of the amended Pole Attachment Act.<sup>2</sup>

Edison Electric Institute (EEI) is the association of the United States investor-owned electric utilities and industry associates worldwide. As of October 1995, EEI's U.S. members served 99 percent of all customers served by the shareholder-owned segment of the U.S. industry, generated approximately 79 percent of all the electricity generated by

<sup>1</sup> UTC was formerly known as the Utilities Telecommunications Council.

<sup>2</sup> The *Order* was published in the Federal Register on August 20, 1996, 61 Fed. Reg. 43023.

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electric utilities, and serviced 76 percent of all ultimate customers in the nation. EEI frequently represents its U.S. members before Federal agencies, courts, and Congress in matters of common concern.

UTC is the national representative on communications matters for the nation's electric, gas and water utilities and natural gas pipelines. Over 1,000 such entities are members of UTC, and include investor-owned utilities, municipal electric systems, rural electric cooperatives, and natural gas distribution and transmission companies.

As the principal representatives of the utilities directly impacted by the Commission's interpretation and implementation of the Pole Attachment Act , 47 U.S.C. Section 224, as amended by the Telecommunications Act of 1996, both EEI and UTC have a direct interest in this proceeding.

## **I. Introduction**

The *Order* incorporates into the FCC's Rules a number of provisions contained in Section 703 of the Telecommunications Act of 1996 that add to or amend portions of Section 224 of the Communications Act of 1934 on the regulation of pole attachments. Specifically, the *Order* deals with the implementation of revised Sections 224(a)(1), (a)(4), (c)(1) and (c)(2)(B), and new Sections 224(a)(5), (d)(3), (g) and (i). The FCC deemed these provisions to be self-effectuating and therefore simply conformed its rules to meet the new statutory requirements.

Because the FCC did not consider the rule modifications as allowing for discretionary action on its part, the FCC did not seek public comment prior to adopting these changes. While not debating the self-effectuating nature of the provisions, EEI and UTC are concerned that the FCC did not provide any guidance to pole owners or attaching entities with regard to how it intends to interpret these provisions. EEI and UTC therefore request clarification of one aspect of the *Order*.<sup>3</sup>

## **II. The Term “Attachment” Should Be Clarified As Meaning “Pole Attachment”**

Section 703 of the 1996 Act adds a new subsection (i) to provide for the allocation of costs for the rearrangement and replacement of an “attachment” to a pole, conduit or right-of-way. However, nowhere in the 1996 Act is there a definition of the term “attachment.”<sup>4</sup> Instead, Section 703 of the Act speaks in terms of “pole attachments” as defined in amended Section 224(a)(4).

EEI and UTC submit that the term “attachment,” as used throughout Section 224, means “pole attachment,” which is defined in Section 224(a)(4) as follows:

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<sup>3</sup> Several aspects of the rules adopted in the *Order* are directly impacted by the *First Report and Order (FR&O)* that the Commission recently adopted in its interconnection proceeding, CC Docket No. 96-98. For example, while the *Order* purports to codify the rule implementing new Section 224(i), the *FR&O* also adopts provisions implementing this section, and the two decisions appear to have some inconsistencies. EEI and UTC intend to address these matters in greater detail in the context of CC Docket No. 96-98.

<sup>4</sup> New subsection 224(h) also uses the term “attachment,” however this subsection was not addressed by the *Order* in this docket, nor was the term “attachment,” as used in Subsection 224(h), specifically defined in the *FR&O* in CC Docket No. 96-98. The discussion in this petition applies equally to the use of the term “attachment” in subsection 224(h), and the petitioners respectfully request the FCC to clarify this term as used in both subsections (h) and (i) of Section 224.

(4) The term “pole attachment” means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

There is nothing in the background or legislative history of Section 224 of the Communications Act, or Section 703 of the Telecommunications Act of 1996, to suggest that Congress intended the term “attachment” in subsection 224(i) to refer to facilities other than those installed by “a cable television system or provider of telecommunications service.” Indeed, the purpose of the Telecommunications Act was to promote competition in telecommunications. When read in context of the Telecommunications Act as a whole, or in the specific context of Section 224, the term “attachment” must refer to attachments by cable television systems or telecommunications service providers; *i.e.*, “pole attachments” as defined elsewhere in that section. To read this term any other way could potentially expand the scope of Section 224 to provide substantive rights to entities other than “a cable television system or provider of telecommunications service.”

**WHEREFORE, THE PREMISES CONSIDERED,** EEI and UTC respectfully request the FCC to confirm that the term “attachment” as used in Sections 224(h) and (I)

shall be interpreted as having the same meaning as "pole attachment" as defined in Section 224(a)(4).

Respectfully submitted,

**EDISON ELECTRIC INSTITUTE**

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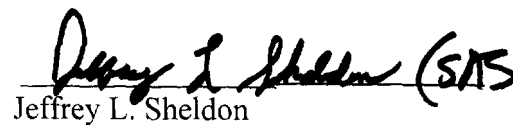
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